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Hearing Date:
October 12, 2000
at 10:00 a.m.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re

Chapter 11

RANDALL'S ISLAND FAMILY GOLF
CENTER, INC., et al

Case No. 00 B 41065 (SMB)
through 00 B 41196 (SMB)

Debtor.

(Jointly Administered)

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**OPPOSITION OF ALL STATE ASSOCIATES OF WEST PALM, LLC TO MOTION FOR
ORDER PURSUANT TO SECTION 365(d)(4) OF THE BANKRUPTCY CODE
EXTENDING THE TIME WITHIN WHICH THE DEBTORS-IN-POSSESSION MUST
ELECT TO ASSUME OR REJECT THEIR UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY**

All State Associates of West Palm, LLC (hereinafter "All State") opposes the Motion filed by Debtors-In-Possession for an Order Pursuant to Section 365(d)(4) of Title 11 of the United States Bankruptcy Code extending the time within which to assume or reject their unexpired lease of nonresidential property with All State, and states as follows:

RESPONSE TO INTRODUCTION

1. Debtors-In-Possession ("Debtors") lease of a parcel of real property from All State located in West Palm, Florida, at which Debtors formerly operated a putting green, putt-putt course, batting cage, pro shop, driving range and related facilities. Only the driving range is presently operational. All State admits that Debtors are seeking an order extending the time within which they

must assume or reject their unexpired lease of nonresidential real property with All State and others for an additional ninety (90) days from October 9, 2000 through January 8, 2001. All State has consistently objected to any extension of the time to assume or reject in this case. All State objects due to the potentially extraordinary damage which may be suffered by All State as a result of the uncertain status of the lease. The Debtors filed their Petition on May 4, 2000, and were required to assume or reject their executory lease with All State on or before July 3, 2000. See 11 U.S.C. section 365(d). On July 17, 2000, All State moved this Honorable Court for an order requiring Debtors to assume or reject immediately. The hearing on All State's Motion was set for August 3, 2000. However, on July 19, 2000, the Debtors filed a motion to approve a sale of several executory leases, including the All State lease, on shortened notice. All State appeared at the hearing on July 31, 2000 to object to the terms of sale and to request immediate assumption or rejection of the lease. The Court adjourned All State's motion pending consideration of the proposed sale of these leases. The Court also extended the date to assume or reject nonresidential real property leases through October 9, 2000, by Order dated July 27, 2000. All State again appeared through counsel to object to the proposed sale order and again requested an order requiring assumption or rejection of All State's lease at the hearing on August 14, 2000. The Court deferred ruling on All State's Motion, and instructed counsel to re-notice the Motion if All State wished to proceed. All State was unable to re-notice its motion for hearing during the month of September, and a hearing date of October 11, 2000 was ultimately obtained. Debtors have now filed a second motion to extend time in which to assume or reject through January 8, 2001, more than six months after the date required for assumption or rejection under 11 U.S.C. Section 365(d)(4). In the meantime, Debtors' defaults under the executory lease with All State as

specifically outlined in All State's Motion to Assume or Reject remain unaddressed, and the Debtors have flatly refused to provide any information concerning when or how these defaults may be remedied.

These defaults include, but are not limited to, the following:

- A. Debtors are required to relocate a sign, entrance road, and lighting to the opposite end of the property pursuant to Section 1.1 and Article IVA of the Lease Agreement;
- B. Payment of delinquent real estate taxes in the amount of \$78,465.38, plus accrued interest and penalties;
- C. Debtors have failed to pay gross receipt payments constituting rent under the Lease Agreement;
- D. Repair of a drainage area on the property, and maintenance to an irrigation system, fences, landscaping, and other maintenance-related items.

All State owns the property subject to a mortgage which originally included a final balloon payment due in August, 2000. All State had been actively marketing the property for sale in order to pay off that mortgage and avoid foreclosure proceedings. All State was unable to accomplish a sale prior to the balloon payment date, largely due to the uncertainty involving the bankruptcy and status of the lease, and was instead forced to negotiate an extension of the balloon date. The balloon payment now comes due in February, 2001. A further extension of time for the Debtors to assume or reject the All State lease may result in foreclosure and loss of the property, which is All State's only asset.

- 2. All State lacks knowledge or information sufficient to form a belief as to the

current number or status of unexpired leases of nonresidential property held by the Debtors. All State states further, however, that Debtors have already identified the All State lease as a non-core asset, of which the Debtors are attempting to divest themselves. Therefore, the All State lease is not necessary or even significant, in Debtors' efforts to reorganize. Further, assumption of the All State lease would require the Debtors to incur significant expenditures to cure existing defaults under the Lease Agreement. There is no good cause to extend the time to assume or reject with respect to this particular lease.

3. Upon information and belief, All State admits that the Debtors entered into some form of agreement with KLAKE Golf, LLC, ("KLAKE") under which the Debtors propose to sell several leases including the lease with All State. In paragraph 3 of the Debtors' Motion, Debtors request an extension of time because the anticipated closing with KLAKE was scheduled to occur on October 5, 2000 (now apparently October 6, 2000), but KLAKE was not required until October 9, 2000 to designate which leases it wished to have assigned. All State's counsel was informed by counsel for Debtors that KLAKE designated the leases it wished to have assigned on or about October 4, 2000. Therefore, the contingencies supporting Debtors' request for an extension have not occurred.

4. All State lacks knowledge or information sufficient to form a belief to the truth of the allegations contained in paragraph 4.

5. In paragraph 5, Debtors admit they have been focusing on the marketing effort for their non-core and underperforming facilities, which include the All State lease. Whatever reasons may exist for the Debtors to request an extension of time to assume or reject other leases, this reasoning does not apply to the All State lease.

6. Debtors have had sufficient time to assess whether to assume or reject the All State lease. All State filed its Motion to Assume or Reject on July 17, 2000. The status of defaults under the Lease Agreement, and all relevant documentation was also provided to the Debtors at that time. There is no good cause to further delay the assumption or rejection of this lease, particularly where the potential damage to All State could be disastrous due to the uncertainty surrounding the lease.

RESPONSE TO BACKGROUND

7. Admitted.
8. Upon information and belief, admitted.
9. All State does not contest this Court's jurisdiction, and All State further does not contest that this is a core proceeding pursuant to 28 U.S.C. Section 157(b)(2)(A).
10. All State admits that on July 27, 2000, this Court entered an order extending time within which the Debtors must assume or reject their unexpired leases of nonresidential real property through October 9, 2000.

RESPONSE TO NEED FOR RELIEF

11. All State denies that Debtors have not had adequate opportunity to analyze whether to assume or reject the All State lease. The date to assume or reject under 11 U.S.C. Section 365(d)(4) expired on July 3, 2000. This Court granted an extension of that date through October 9, 2000 over the objection of All State. Now Debtors seek a further extension through January 8, 2001, which may result in a default under All State's mortgage with respect to the property. Additionally,

further extension will make it difficult or impossible to finalize a sale of the property before the balloon date.

12. In paragraph 12, Debtors admit that they and their professionals have “concentrated their efforts on consummating the sale of 34 properties to KLAK.” This, as represented by Debtors, is asserted to be evidence of the Debtors’ early and substantial progress in analyzing their business and paring down non-core and/or unprofitable operations and disposing of leases. The All State lease is one of those leases on which the Debtors and their professionals have “concentrated” and made “substantial progress” in analyzing. Nevertheless, Debtors still seek another ninety (90) days to assume or reject this lease. Debtors do not need to make any further analysis with respect to the All State lease. Instead, the request for an extension of time is merely an effort to delay the Debtors’ obligation to cure defaults under the lease prior to assumption. Due to the ongoing uncertainty of the lease, the existing tax liens on the property caused by Debtors’ defaults under the lease for payment of taxes, and the difficulty faced by All State in marketing and selling the property prior to the extended balloon payment date in February, 2001, All State respectfully requests that the Debtors be required to immediately assume or reject the lease.

13. Upon information and belief, All State denies that the Debtors have received any continuing offers for the All State lease. In view of the deteriorated condition of the premises, and the expiration of the transitional use permit in 2003 under which the Debtors operate the facility, it is unlikely that anyone would buy the All State lease as a stand alone proposition.

14. All State denies that the Debtors require any further time to determine whether to

assume or reject the All State lease. As indicated above, Debtors have already identified the All State lease as a non-core or unprofitable asset to be disposed of. No cause exists to extend time to assume or reject this particular lease.

15. All State denies that the Debtors require further time to develop a strategic business plan, at least with respect to the All State lease, since the All State lease has been identified by the Debtors as a non-core and/or unprofitable asset.

RESPONSE TO REQUEST FOR RELIEF

16. Because the All State lease has been identified as a non-core and/or unprofitable asset, and All State's Motion to Assume or Reject has been pending since July, 2000, All State respectfully requests that the Debtors be required to immediately assume or reject this lease. All State further requests that Debtors' request for an extension of time to assume or reject be denied as to the All State lease.

RESPONSE TO APPLICABLE AUTHORITY

17. All State does not contest the quoted portion of 11 U.S.C. Section 365(d)(4).

18. All State does not contest that the Court may in its discretion extend the time to assume or reject on a showing of cause by the Debtors. However, with respect to the All State lease, Debtors cannot make such a showing. The Petition was filed on May 4, 2000, and All State's Motion to Assume or Reject has been pending since July 13, 2000. The Debtors have already identified the All State lease as a non-core and/or unprofitable asset. Therefore, no cause can exist to delay assumption or rejection of the All State lease.

19. All State does not contest the Debtors' assertion that courts have the discretion

to grant an extension for cause. However, for the reasons stated above, All State submits that no cause exists in this case for an extension with respect to the All State lease.

20. All State denies that cause exists under the cited authority in paragraph 20. Under the four factor analysis cited by the Debtors themselves, an extension should be denied as to the All State lease. Under factor (i), All State admits that there are a large number of leases, however, the All State lease is, upon information and belief, the only lease for which a motion to assume or reject is pending. Additionally, the All State lease is one of those which the Debtors admit they have concentrated on since the beginning of this case. With respect to factor (ii), the Debtors have already admitted that the All State lease is not a primary asset of the Estate and is instead a non-core and/or unprofitable asset which is simply being divested by the Debtors. With respect to factor (iii), the Debtors clearly do not need more time to analyze the All State lease in light of the plan it is formulating since this particular lease will not be part of that plan. With respect to factor (iv), the Debtors are in post-petition default under the lease, and the Debtors are not actively maintaining or operating the property. Therefore, even under the Debtors' cited authority, no cause exists for an extension of time with respect to the All State lease.

21. All State denies that any of the analysis contained in paragraph 21 applies to the All State lease. While there may be numerous leases which will be important to the attempted reorganization of the Debtors, the All State lease has already been identified as a non-core and/or unprofitable lease, and the Debtors are simply attempting to get rid of this lease. All State denies that the Debtors are current on all of their post-petition rent obligations. Debtors have failed to pay delinquent property taxes which constitute a post-petition lien against the property. An additional real

property tax assessment will become due on November 1, 2000. Debtors have also failed to maintain the property and operate it in order to produce revenue, a percentage of which constitutes rent under the lease. Debtors have also failed to relocate the entrance and signage for the property as required under the lease.

RESPONSE TO BEST INTERESTS OF THE ESTATE

22. All State denies that an extension of time is in the best interest of the Estate with respect to the All State lease. The All State lease has already been identified as a non-core, unprofitable asset. Assumption of the All State lease will require significant expenditures to cure defaults under the lease. Debtors have had literally months to make a determination with respect to the All State lease, and All State's Motion to Assume or Reject has been pending since July 13, 2000. Debtors should be immediately required to assume or reject this lease.

NOTICE

23. All State does not contest adequate notice of this motion.

WAIVER OF MEMORANDUM OF LAW

24. All State concurs with the Debtors request that this Court dispense with and waive the requirement for submission of a memorandum of law contained in Local Rule 9013-1(b).

RESPONSE TO PRIOR REQUESTS

25. All State admits that on June 16, 2000, Debtors filed a prior motion with this Court requesting entry of an order extending the time with which to assume or reject unexpired leases of nonresidential real property. All State filed its own motion to assume or reject on July 17, 2000. All State further admits that on July 27, 2000 this Court entered an order extending the time in which to

assume or reject through October 9, 2000, subject to any landlord's motion to assume or reject a particular lease.

WHEREFORE, All State respectfully requests entry of an order denying extension of time within which Debtors must elect to assume or reject the All State lease, and granting such other and further relief as this Court deems just and equitable.

Respectfully submitted,

Dated: October 6, 2000
East Lansing, Michigan

**LOOMIS, EWERT, PARSLEY, DAVIS
& GOTTING, P.C.**

By: /s/Jeffrey S. Theuer
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CERTIFICATE OF SERVICE

I, Jeffrey S. Theuer, an attorney, hereby certify that on Thursday, October 6, 2000, I caused a true and correct copy of the attached Opposition of All State Associates of West Palm, LLC to Motion For Order Pursuant to Section 365(d)(4) of the Bankruptcy Code Extending the Time Within Which the Debtors-in-possession must Elect to Assume or Reject Their Unexpired Leases of Nonresidential Real Property to be served via First Class, United States Mail, postage prepaid, upon the following: Fried, Frank, Harris, Shriver & Jacobson, One New York Plaza, New York, New York 10004 (Attn: Gerald C. Bender, Esq.), the Office of the United States Trustee, 33 Whitehall Street, New York, New York 10004 (Attn: Brian Masumoto, Esq.), and Berlack, Israels & Liberman, LLP, 120 West 45th Street, New York, New York 10036 (Attn: Edward S. Weisfelner, Esq.).

Dated: 10/6/00

/s/Jeffrey S. Theuer
Jeffrey S. Theuer (P44161)